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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION**

**-and-**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

*\*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM)*

Bankruptcy Case  
No. 19-30088 (DM)

Chapter 11  
(Lead Case)  
(Jointly Administered)

**RESPONSE OF THE OFFICIAL  
COMMITTEE OF TORT CLAIMANTS  
TO THE OBJECTIONS OF THE  
CALIFORNIA STATE AGENCIES AND  
THE SONOMA CLEAN POWER  
AUTHORITY TO THE DEBTORS' BAR  
DATE MOTION (Dkt. Nos. 1784, 2307,  
2321)**

Date: June 26, 2019  
Time: 9:30 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16 Floor  
San Francisco, CA 94102

1 The Official Committee of Tort Claimants (“TCC”) in the above-captioned chapter 11  
2 cases of PG&E Corp. and Pacific Gas and Electric Company (collectively, the “Debtors” or  
3 “PG&E”), files this response (“Response”) to the following objections (together, the  
4 “Objections”) to the Debtors’ Bar Date Motion (Dkt. No. 1784) (“Debtors’ Bar Date Motion”  
5 or “Motion”): (1) the Limited Objection of the California State Agencies to the Debtors’ Bar  
6 Date Motion (Dkt. No. 2307) (“California AG Objection”); and (2) Sonoma Clean Power  
7 Authority’s Limited Objection to the Debtors’ Bar Date Motion (Dkt. No. 2321) (“SCPA  
8 Objection”). In support of this Response, the TCC respectfully states as follows.

### 9 PROCEDURAL HISTORY

10 On May 1, 2019, the Debtors filed their Motion, which proposed model claim forms,  
11 notice procedures and a bar date of September 16, 2019. Motion at 2.

12 On May 4, the TCC filed its motion to approve its model Fire Proof of Claim Form and  
13 accompanying memorandum in support (Dkt. Nos. 1824, 1825) (together, the “TCC Claim Form  
14 Motion”).<sup>1</sup>

15 On May 31, 2019, the TCC filed its objection to the Debtors’ Bar Date Motion (Dkt. No.  
16 2306).

17 That same day, the TCC filed a motion to approve notice procedures and a bar date and  
18 accompanying memorandum in support (Dkt. Nos. 2296, 2297) (together, the “TCC Bar Date  
19 Motion”). The TCC proposes a Fire Claims Bar Date of January 31, 2020.

20 Also on May 31, 2019, the California AG and SCPA filed Objections to the Debtors’ Bar  
21 Date Motion. This Response addresses the arguments raised in those Objections.

22 The Debtors have adopted the TCC’s model Fire Proof of Claim Form, and thus  
23 objections to the Debtors’ proof of claim form are moot. However, for completeness, the TCC  
24 still responds to these objections.

### 25 SUMMARY OF ARGUMENT

26 In the Objections, the SCPA and the California AG argue that the Debtors’ Bar Date  
27 Motion, if granted, could prevent victims of future fires from filing claims in these Chapter 11

28 <sup>1</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the TCC Claim Form Motion.

Cases. The TCC is filing this Response to show that the Court does not need to make a preliminary determination now on how to treat future fire claims because whether a future claim is a claim that could have been filed before the bar date as a pre-petition claim turns on the allegations in the claim itself and the nature of the claim is not known at this time. Moreover, the TCC's proposal of a January 31, 2020 bar date has many advantages – including the fact that it solves the problem raised here in the Objections: By January 31, 2020, we will know the details of any 2019 fires and the nature of any claim that arises therefrom, as to whether or not the claim is a pre-petition claim that could be filed before the bar date.

### **ARGUMENT**

#### **A. Fire Claims Only Include Prepetition Wildfires**

The Debtors' Motion and the Objections raise two issues. The first issue is whether the Debtors' wildfire claim form or bar date or the TCC's Fire Claim Bar Date require a claimant to file a Fire Claim based on a fire occurring after the Debtors filed these Chapter 11 Cases. The Debtors have adopted the TCC's claim form and hence, the issue of whether the Debtors' wildfire claim form is objectionable is now moot.

The SCPA argues that the Debtors' Bar Date Motion would bar claims arising from future fires because the Motion references "unmatured" claims, and, according to the SCPA, goes beyond the definition of "claim" in the Bankruptcy Code. *See* SCPA Objection at 6-13; *see also* California AG Objection at 3. The TCC's Fire Proof of Claim Form and Fire Claim Bar Date Notice define a Fire Claim as a claim arising from the prepetition fires, so the TCC's claim form is not subject to the Objections. TCC Claim Form Memorandum (Dkt. No. 1825) at 2. In addition, the TCC's Proof of Claim Form does not include the requirements for the burdensome information request by the Debtors in the model proof of claim form that the Debtors once proposed, and have now abandoned in favor of the TCC's claim form. Thus, nothing about the TCC's Fire Proof of Claim Form implicates the issue raised in the Objections.

#### **B. Adjudication of Future Fire Claims is Improper at This Time**

The second issue is whether a claim that arises from a fire after the chapter 11 filing, but prior to the TCC's January 2020 Fire Claim Bar Date, should be filed by Fire Claimants using an

1 amended Fire Proof of Claim Form that applies to such fire claims in this case. The Court should  
2 not answer that question now, as the fire has not occurred and the claim has not arisen, the  
3 potential claim is speculative and hence the issue is not justiciable. Subject to that position, the  
4 TCC generally outlines its views on this question below.

5 The test for whether a claim is a prepetition claim that should be filed before a claims bar  
6 date, or a postpetition “future claim” that is not covered by the claims bar date, is the “fair  
7 contemplation” test, that is whether the claimant fairly contemplated that he or she held such a  
8 claim that the claimant could file before the bar date. *Zilog Inc. v. Rose Marie Corning (In re*  
9 *Zilog, Inc.)*, 450 F.3d 996, 1000-01 (9th Cir. 2006) (holding that employees who were only aware  
10 of sex discrimination postpetition could not fairly contemplate their claim if they were not aware  
11 of the claim); *Cal Dep’t of Health Services v. Jensen (In re Jensen)*, 995 F.2d 925, 927-28 (9th  
12 Cir. 1993) (holding that the state had sufficient prepetition knowledge of debtors’ potential  
13 liabilities for cleanup costs and thus their claim was a prepetition claim).

14 In one of the leading cases that adopts the “fair contemplation” test, *Fogel v. Zell*, the  
15 Seventh Circuit explained the test arises from the fundamental principle that the claimant must  
16 have “fair notice,” “appropriate in the circumstances,” that the claimant has a claim that he or she  
17 must file, in order to protect the claimant from having a “legal right extinguished” if he “fails to  
18 respond to a pleading,” such as a bar date notice. 221 F.3d 955, 962 (7th Cir. 2000). The Seventh  
19 Circuit explained that the fair contemplation test arises under the “fair notice” standard of  
20 *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950), in which the Supreme Court  
21 held the standard is a due process right to notice under the Fourteenth Amendment. 221 F.3d at  
22 962.

23 A claim that arises from an October 2019 fire, before the January 31, 2020 bar date, could  
24 be held to be a prepetition claim, depending on the allegations of the claim as to whether the  
25 claimant had such fair notice of the claim at the appropriate time. In that situation, the claimant  
26 could file a claim in these Chapter 11 Cases, before the January 2020 bar date, consistent with the  
27 fairness and due process constitutional underpinnings of the fair contemplation test. However, it  
28 is speculation as what type of claim could arise in this case before the bar date. Such a claim is

1 not justiciable at this time. And hence, there is no legal issue or claim that should prompt this  
2 Court to rule on such a hypothetical under well settled rules of justiciability. Notwithstanding  
3 that fact, the potential of a wildfire in the Fall of 2019 is another reason why the Court should  
4 adopt a January 2020 bar date and not a September 2019 bar date that the Debtors have suggested.  
5 In short, a January 2020 bar date for fire claims gives the parties and the Court time to evaluate  
6 what may occur this Fall.

7 **CONCLUSION**

8 For the reasons stated in this Response, the TCC renews its request that the Court deny the  
9 Debtors' Bar Date Motion, and without ruling on the premature issue regarding claims for future  
10 fires raised in the Objections.

11 Dated: June 19, 2019

Respectfully submitted,

12 BAKER & HOSTETLER LLP

13 By: /s/ Robert A. Julian  
14 Robert A. Julian

15 *Counsel for The Official Committee of Tort*  
16 *Claimants*